



Commodity Futures Trading Commission

Office of Public Affairs

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Regulations to Exclude Utility Operations-Related Swaps with Utility Special Entities from the De Minimis Threshold for Swaps with Special Entities

The Commodity Futures Trading Commission is considering adopting amendments to the definition of the term “swap dealer” to permit a person to exclude certain types of swaps entered into with special entities that are utilities from the \$25 million special entity *de minimis* threshold above which a person dealing in such swaps must register as a swap dealer.

Utility Special Entities

The Dodd-Frank Act provided special regulatory protections in connection with swap trading by certain federal agencies and states, political subdivisions of states, and certain of their agencies, instrumentalities and pension systems. These entities collectively were defined as “special entities.” Certain electric and natural gas utilities are special entities (because, for example, they are owned or operated by state or local governments or by instrumentalities of local governments). These utility special entities must provide continuous services to their customers and are important to public safety. To do so, these entities often rely on swaps associated with their electricity and/or natural gas operations to hedge or mitigate the risks of their business operations in a cost effective way.

Counterparties to Utility Special Entities

The market for such swaps is, in many cases, regional and localized. Persons and groups representing utility special entities have informed the Commission that the prospect of exceeding the *de minimis* threshold for swaps with special entities has restricted the number of counterparties that are willing to enter into such swaps.

The Regulations being considered by the Commission

The amendments to Regulation 1.3(ggg) would permit a person that deals in utility operations-related swaps (as defined) with utility special entities (as also defined) to exclude those swaps in calculating whether the person’s dealing activity is below the \$25 million special entity *de minimis* threshold (provided that such swaps would still be included when calculating whether the person exceeds the general \$8 billion threshold). These amendments would:

- Define the term “utility special entity” to mean a special entity, as that term is defined in Section 4s(h)(2)(C) of the Act and Regulation 23.401 (for example, a state or local government, a government agency, or an instrumentality, department or corporation established by a state), that:
 - Owns or operates electric or natural gas facilities, electric or natural gas operations or anticipated electric or natural gas facilities or operations;
 - Supplies natural gas or electric energy to other utility special entities;
 - Has public service obligations or anticipated public service obligations under Federal, State or local law or regulation to deliver electric energy or natural gas service to utility customers; or
 - Is a Federal power marketing agency as defined in Section 3 of the Federal Power Act;

- Define the term “utility operations-related swap” to mean a swap:
 - To which one of the parties is a utility special entity;
 - That the utility special entity is using to hedge or mitigate commercial risk (as defined in Regulation 50.50(c));
 - That is related to an exempt commodity (as that term is defined in Section 1a(20) of the Act), or to an agricultural commodity insofar as the agricultural commodity is used for fuel for generation of electricity, or is otherwise used in the normal operations of the utility special entity; and
 - That is an electric energy or natural gas swap, or that is associated with: the generation, production, purchase or sale of natural gas or electric energy, the supply of natural gas or electric energy to a utility special entity, or the delivery of natural gas or electric energy service to customers of a utility special entity; fuel supply for the facilities or operations of a utility special entity; compliance with an electric system reliability obligation; or compliance with an energy, energy efficiency, conservation, or renewable energy or environmental statute, regulation, or government order applicable to a utility special entity;
- Permit a person to rely upon a written representation by the utility special entity that it is a utility special entity and that the swap is a utility operations-related swap and to require the person to keep any such representation in accordance with the general recordkeeping requirements of Regulation 1.31; and
- Delete a notice requirement that had been included in the proposed version of the rule for persons who seek to exclude utility-operations related swaps from their special entity *de minimis* threshold calculation.